



AZD 093 660 512
Part C 2A-1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94108

Via Electronic and US Postal Service Mail

December 19, 2011

Mr. Douglas Tymins
Executive Vice President
AIG Retirement Services
2800 North Central Avenue
Suite 2100
Phoenix, Arizona 85004

Re: Washington Park Corporate Center, Lot 3, 4400 Block East Washington Street, Phoenix, Arizona Draft Deed Notice (DDN) for the Trench Area – Additional USEPA Modifications to Revised DDN

Dear Mr. Tymins:

The U.S. Environmental Protection Agency Region 9's (USEPA's) December 14, 2011 letter transmitted a copy of the Draft Deed Notice (DDN) as modified by USEPA. The DDN is for the cap that covers soils containing polychlorinated biphenyls (PCBs) in Lot 3. This letter responds to the enclosed electronic mail (e-mail) message from your consultant, David Regonini (Western Technologies, Inc. [WTI]) dated December 19, 2011 (received at 9:54 AM), requesting clarification on one of several changes that USEPA made to the DDN. Attached is the DDN as revised by USEPA on December 19, 2011 in response to WTI's e-mail message. In addition, USEPA made two additional revisions that were necessary.

WTI's e-mail message requested that USEPA clarify the sentence: "The Trench Area (or Excavation Sensitive Area) is classified as a low occupancy area as defined in 40 CFR 761.3 and 761.61(a)." USEPA had added this sentence to Section C (Legal Description) of the DDN. USEPA has deleted the sentence in the attached DDN based on our reinterpretation of the Toxic Substances Control Act (TSCA) PCB regulations in 40 CFR 761.61(a)(8)(i) and (a)(8)(i)(A)(1) in context to caps required in high occupancy areas (e.g., residential area)¹. The Trench Area continues to be a high occupancy area and the cap covers site soils containing PCBs above 1 part per million (ppm or milligram/kilogram [mg/kg]) and below 10 mg/kg.

In addition, we made the following necessary revisions. The last sentence in the last paragraph of Section F.2.1 has been modified to read: "The Cap covers and prevents access to soils containing PCBs above 1 mg/kg and below 10 mg/kg." This modification was made because the original sentence referred

¹ High occupancy areas are defined in 40 CFR 761.3.

Mr. Douglas Tymins
Re: Washington Park Corporate Center
Revised Draft Deed Notice, Additional Modifications
Date: December 19, 2011

to "PCB-contaminated soils" and under the TSCA regulations in 40 CFR 761.3 "PCB-contaminated" refers to non-liquid materials containing PCBs at concentrations above or equal to 50 ppm and below 500 ppm. In the second paragraph under Section F.2.3, we changed "If a footing becomes part of or the final CAP. . ." to "If a footing becomes part of the final CAP or the final CAP itself. . ." USEPA made this change for clarity.

USEPA appreciates WTI requesting clarification on the revisions that USEPA made to the DDN on December 14, 2011. We hope the changes reflected in the attached DDN are responsive to WTI's e-mail message. Please call Carmen D. Santos at 41.972.3360 if you have any questions concerning this letter and the attached DDN further modified by USEPA.

Sincerely,


Arlene Kabei
Associate Director
Waste Management Division

Enclosures (2)

cc: Dave Regonini (WTI)
Humberto Preciado (WTI)
Steve Armann (USEPA R9)
Carmen D. Santos (USEPA R9)



David Regonini

to:

Carmen Santos

12/19/2011 09:54 AM

Cc:

"Tymins, Doug", Humberto Preciado

Hide Details

From: David Regonini <david.r@wt-us.com>

To: Carmen Santos/R9/USEPA/US@EPA

Cc: "Tymins, Doug" <dtymins@sunamerica.com>, Humberto Preciado <h.preciado@wt-us.com>

Carmen,

Specifically referring to the added line under Section C of the deed notice which states, "The Trench Area (or Excavation Sensitive Area) is classified as a low occupancy area as defined in 40 CFR 761.3 and 761.61(a)".

We understood the process of capping the area and filing the deed notice allowed that area to remain classified as a "high occupancy area", pursuant to 40 CFR 761.61(a)(4)(i)(A), which states "High occupancy areas where bulk PCB remediation waste remains at concentrations >1 ppm and less than or equal to 10 ppm shall be covered by a cap meeting the requirements of paragraphs (a)(7) and (a)(8).

Wasn't that the whole purpose of the further characterization, cap construction and deed notice? Otherwise, the clean-up level for low occupancy areas is less than or equal to 25 ppm, which was easily achieved.

Please advise on the meaning of the added statement. Specifically, does that exclude the planned residential development that you specifically reference in your letter? We need EPA to clarify this statement.

David Regonini, REA
Technical Director, Environmental Services
Office: 602-437-3737 ext. 137 • Cell: 602-763-0231
3737 East Broadway Road • Phoenix AZ 85040



***** ATTACHMENT NOT DELIVERED *****

This Email message contained an attachment named

image001.jpg
which may be a computer program. This attached computer program could contain a computer virus which could cause harm to EPA's computers, network, and data. The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced into the EPA network. EPA is deleting all computer program attachments sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you should contact the sender and request that they rename the file name extension and resend the Email with the renamed attachment. After receiving the revised Email, containing the renamed attachment, you can rename the file extension to its correct name.

For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

***** ATTACHMENT NOT DELIVERED *****

Revised by USEPA on December 19, 2011

When Recorded return to:

SAFG Retirement Services, Inc.
c/o AIG Global Investment Group
2800 North Central Ave.
Suite 2100
Phoenix, AZ 85004

DEED NOTICE

Facility Name:

Lot 3 of Washington Park Corporate Center
4400 Block of East Washington Street
Phoenix, Arizona ("The Property")

This Deed Notice, when recorded, is a covenant that runs with the land and burdens the Property, binds all owners' heirs, and successors.

This Deed Notice is executed and recorded by:

SAFG Retirement Services, Inc.
c/o AIG Global Investment Group
1 Sun America Center
38th Floor
Los Angeles, CA 90067

Owner covenants and agrees as follows:

A. Presence of Contamination.

Environmental contaminants are present on a portion of the Southeast Half of Lot 3 of Washington Park Corporate Center, Phoenix, Arizona.

B. Warranty of Title.

Owner is the only owner of, and holds all equitable and legal title to, the Property and has the authority to execute and record this Deed Notice.

C. Legal Description.

Lot 3 of Washington Park Corporate Center, Phoenix, Arizona. This Deed Notice applies only to a portion of the Property herein referred as the Excavation Sensitive Area or as referred to in communication with the **USEPA U.S. Environmental Protection Agency Region 9 (USEPA)** as the "Trench Area". A legal description of the portion of the Property subject to the Deed Notice is attached and marked as Exhibit 1.

Mr. Douglas Tymins
Washington Park Corporate Center
Additional Modifications to Revised Draft Deed Notice
USEPA changes in blue underlined boldface font

Date: December 19, 2011

D. Maps.

The location of the Property and the portion of the Property subject to this Deed Notice is attached and marked as Exhibit 4.2

E. Environmental Contaminant Information.

Polychlorinated Biphenyls (PCBs) impacted soils remain in an area of the site referred to as the Excavation Sensitive Area (Exhibit 1). This area was previously referred as the "Trench Area" in letters from the USEPA dated: September 22, 2008; July 14, 2009; July 2, 2010; and September 15, 2011 (attached herein). The PCB concentrations range from 1.2 to 6.8 milligrams per kilogram (mg/kg) and the soils containing these concentrations are at depths ranging from 19 to 36.5 feet below current site grade (approximate site grade elevation is 1148 feet above mean sea level).

F. Engineering Control

Because the Owner is using an engineering control to prohibit contact with and migration of the remaining PCBs, the owner agrees to the following:

1. The engineering control in the Excavation Sensitive Area consists of a compacted clay soil cap (earthen CAP) beginning at an approximate Elevation 1142.8' and extending upward 4.5 feet (Elevation 1147.3'). This ear CAP is covered with 6-mil thick plastic sheeting followed by a 0.5 foot-thick soil cover material. Soil used to construct the CAP meets the requirements of 40 CFR 264.310(a) and 40 CFR 761.75(b)(1)(ii) through (b)(1)(v). That is, the soil has a permeability equal to or less than 1×10^{-7} cm/sec, has more than 30% passing the No. 200 sieve, a liquid limit greater than 30, and a plasticity index greater than 15. The purpose of this CAP is to limit exposure to PCB impacted soils.

2. The maintenance requirements for the engineering control are presented herein:

2.1 General

The Excavation Sensitive Area has an engineered earthen CAP at elevation 1147.3 feet above mean sea level. The CAP was constructed with clean soil or other materials that meet the requirements of 40 CFR 761.75(b)(1)(ii) through (b)(1)(v) and the USEPA Conditions of Approval of Cap Construction and Design specified in their its letter dated July 2, 2010 (attached herein).

Any Owner of the Excavation Sensitive Area or any part thereof that will be conducting any development on or over the Excavation Sensitive Area, must notify all contractors of the existence and purpose of the earthen CAP. The CAP covers and prevents access to soils containing PCBs above 1 mg/kg and below 10 mg/kg.

Date: December 19, 2011

2.2 Maintenance of the Earthen CAP

The Property including the Excavation Sensitive Area is currently vacant, graded, undeveloped land with no structures or development and no occupants. While it remains undeveloped land, the Owner shall maintain the earthen CAP in its current condition. From time to time, but at least annually, the Owner shall conduct an inspection of the earthen CAP to observe if it has been altered in any way that would cause the CAP to not perform as intended (such as but not limited to: erosion, cracking, desiccation, disturbance, etc.). If the inspection reveals any indications that the CAP has been compromised, altered, or affected in any way that would affect its performance, the Owner must repair the CAP to its original condition. The repair to the CAP should be completed using clean soil or other materials that meet the requirements of 40 CFR 761.75(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density ASTM D698. Annually, the Owner will inspect the CAP and if a repair or alteration to the CAP is needed **this should be conducted within 72 hours after discovery. Additionally, the owner shall submit a report describing the repairs or alterations to USEPA within 14 days after either completing any repairs or before implementing any alterations of the CAP.**

2.3 Development on the CAP

In potential landscaped areas, a minimum 24-inch thickness of the CAP must be maintained at all times. All utility line cuts or landscaping activities through the CAP must be backfilled and compacted with clean soil or other materials that meet the requirements of 40 CFR 761.75(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density.

Any asphalt or concrete placed on the CAP will become a part of the CAP with respect to future maintenance and inspection of the CAP. Consistent with the requirements of 40 CFR 761.61(a)(7), portland cement or asphaltic concrete shall have a minimum thickness of 6 inches. If any foundations penetrate the CAP the footing and slab thickness shall have a minimum thickness of 6 inches and the footing will become a part of the CAP with respect to future maintenance of the CAP. Once and if pavement or foundations cover the surface of the Excavation Sensitive Area, the earthen cap is no longer designated the CAP and the pavement and/or foundations will become the final CAP. The final CAP ~~must and should~~ shall be maintained and repaired in perpetuity. Pavements or foundations qualify as a CAP that functions with minimum maintenance per 40 CFR 264.310. The owner shall maintain the integrity and effectiveness of ~~this~~ the final CAP including making repairs to the CAP as necessary to correct the effects of settling, subsidence, erosion or other events. If a footing becomes part of the CAP or the final CAP itself, the footing excavation must be backfilled with clean soil or other materials that meet the requirements of 40 CFR 761.75(b)(1)(ii) through (b)(1)(v) and compacted to a minimum of 95 percent of the standard proctor density.

Mr. Douglas Tymins
Washington Park Corporate Center
Additional Modifications to Revised Draft Deed Notice
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Date: December 19, 2011

3. Owner agrees to the specified maintenance requirements and to implement the procedures outlined in Section 2 of this document ~~in perpetuity as required in 40 CFR 761.61 (a)(8) and USEPA's July 14, 2009 letter.~~
4. If any person desires to ~~cancel or~~ modify the engineering control in the future, the person shall obtain the USEPA's written approval within 45 days before modification of the engineering control. Any modification of the engineering control without the USEPA's written permission is a violation of this deed notice.
5. If any person desires to cancel the engineering control in the future, the person shall cancel the engineering control in accordance with all the requirements in 40 CFR 761.61(a)(8)(ii).

G. Additional Information

More ~~detained~~ detailed information on the remediation is maintained and available ~~at the USEPA~~ at the following addresses:

Western Technologies, Inc.
3737 East Broadway Road
Phoenix, Arizona 85040-2921

And

United States Environmental Protection Agency Region 9
RCRA Corrective Action Office
Waste Management Division
Mail Code WST-5
75 Hawthorne Street
San Francisco, California 94105

SAFG Retirement Services, Inc.,
fka AIG Retirement Services, Inc.

By: _____
Douglas S. Tymins
Authorized Agent

Mr. Douglas Tymins
Washington Park Corporate Center
Additional Modifications to Revised Draft Deed Notice
USEPA changes in blue underlined boldface font

Date: December 19, 2011

State of ~~California~~ Arizona
County of _____

On _____ before me, _____,
(here insert name and title of the officer)
personally appeared _____

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)